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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In the Matter of The Andersen Family Trust	B290175
STEPHEN ANDERSEN et al., Plaintiffs and Respondents, v. TAYLOR PROFITA, Appellant.	(Los Angeles County Super. Ct. No. BP099392/ BP110256)

APPEAL from an order of the Superior Court of Los Angeles County, Daniel Juarez, Judge. Reversed.

Taylor Profita, in pro.per., for Appellant.

Law Offices of John A. Belcher and John A. Belcher for Plaintiffs and Respondents.

After the trial court issued a distribution order in a long-running trust dispute, appellant Taylor Profita filed a motion challenging it. Respondents Stephen Andersen and Kathleen Brandt moved to strike the motion and requested sanctions. Appellant then filed a second motion challenging the distribution order; respondents again moved for sanctions. The trial court ruled that appellant's first motion was frivolous and awarded sanctions to respondents. The trial court denied the second motion without prejudice, but later found that the arguments therein were frivolous and made in bad faith, and awarded further sanctions to respondents.

After the second sanctions award, respondents moved for an order declaring appellant a vexatious litigant. The court granted the motion and issued a prefiling order prohibiting appellant from filing any new litigation in propria persona without permission from the court. It denied appellant's motion to reconsider the prefiling order.

Appellant, appearing in propria persona, contends that the prefiling order should be reversed because his conduct did not meet the definition of "vexatious litigant" in Code of Civil Procedure section 391.[1] We agree and reverse the order.

FACTUAL BACKGROUND

This case arises from a contentious 13-year dispute over the Andersen Family Trust (the trust). Since the trustor's death in 2006, his children, respondents, have been feuding with his romantic partner, Pauline Hunt, who is appellant's late grandmother, over the trust terms and assets. We recite here only the facts relevant to the instant appeal concerning the

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[1]All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

prefiling order; more detailed background information can be found in our previous opinions addressing the case. (*Andersen v. Hunt* (____, 2019 No. B286565) [nonpub. opn.]; *In re Andersen Family Trust* (Dec. 1, 2015, No. B255546) [nonpub. opn.]; *Andersen v. Hunt* (2011) 196 Cal.App.4th 722.)

A. *The Trust and Amendments*

The trust initially provided that respondents were entitled to equal shares of the trust assets upon the trustor's death. The trustor amended the trust several times, however, ultimately designating Hunt as a 60 percent beneficiary and respondents as collective 40 percent beneficiaries. As relevant here, one of the amendments named appellant a contingent beneficiary: "Should Pauline Hunt predecease trustor, then the trust assets shall be distributed as follows: Twenty-five percent (25%) to Taylor Profita, of the residue of the trust assets[.] Seventy-five percent (75%) of the residue of the trust assets shall be distributed to Stephen E. Andersen, Kathleen L. Brandt, and John Andersen to share and share alike. Should Taylor predecease trustor, then the entire residue of the trust assets shall go to Stephen, Kathleen and John to share equally."[2] The trustor died in 2006 and Hunt died on February 2, 2018. The condition precedent to establish appellant's status as beneficiary accordingly did not and cannot occur.

Shortly after the trustor's 2006 death, respondents filed a petition challenging the validity of the trust amendments, as well as the propriety of various financial transactions in which Hunt engaged after the trustor suffered a stroke. After holding a bench trial on the third amended version of respondents' petition, the

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[2]A subsequent amendment removed John, respondent Stephen Andersen's son, as a beneficiary.

trial court found that neither the trust amendments nor the transactions were valid. On appeal, we reversed the trial court's findings as to the amendments, but did not disturb its findings regarding the transactions. (See *Andersen v. Hunt*, *supra*, 196 Cal.App.4th 722.)

As relevant here, the trial court found that Hunt was aware the trustor lacked capacity when he changed the beneficiary of his life insurance policy from respondents to Hunt. The court further found that the policy "was not an asset of the [trust]," and that respondents "are the parties to whom the proceeds of the policies [*sic*] should have been paid. Accordingly, Hunt holds said policy proceeds in constructive trust for the benefit of Stephen and Kathleen . . . ." The trial court also found that Hunt forged the trustor's endorsement in connection with at least two bank accounts. Those findings were not disturbed on appeal. Neither was a September 13, 2010 order that directed Hunt to repay the life insurance proceeds directly to respondents, with interest.

B. *Distribution Order*

In November 2016, respondents petitioned for an order directing the trustee to distribute the trust assets. Their proposed asset allocation awarded to respondents 100 percent of the interest accrued on debts Hunt owed to the trust as a result of her improper transactions. Hunt objected, arguing that the terms of the trust entitled her to 60 percent of the accrued interest because the debts were a trust asset and she was a 60 percent beneficiary. The court held a hearing on the matter in May 2017 and received additional briefing in June 2017.

On September 1, 2017, the court issued a written ruling addressing whether the trustee should "include Hunt's debt as a

Trust asset to then be part of the distribution on a 60/40 basis." The court observed that doing so "would effect a 60% reduction in her debt because she would be entitled to 60% of the Trust assets." Acknowledging that respondents' "objection to a reduction in her debt is understandable," the court stated it was "not willing to depart from the Settlor's intent because the other two beneficiaries of the Trust will be receiving 100% of their designated share of the Trust assets, including 100% of the interest for the delayed payment of their share, and because the 10% interest rate is significantly higher than the actual interest rates in effect during this time period." The court directed, "the Trustee shall include what Hunt owes the Trust as an asset of the Trust, and then calculate the amount to be distributed to the three Trust beneficiaries. . . ." The ruling was thus somewhat ambiguous as to whether the accrued interest on Hunt's debts would be treated as a trust asset. Part of the order suggested that respondents would receive 100 percent of the accrued interest, while a later portion suggested that the trustee should treat the interest as an ordinary trust asset, of which Hunt would receive 60 percent.

On September 25, 2017, the trial court issued a minute order directing respondents' counsel, John Belcher, to prepare a distribution order. Aside from a minor revision not relevant here, the trial court entered the order as prepared on September 25, 2017. The order did not divide the accrued interest 60-40 as suggested in the latter portion of the September 1, 2017 written ruling. Instead, it deducted 100 percent of the accrued interest from Hunt's share and awarded it directly to respondents, as suggested in the earlier portion of the September 1, 2017 ruling.

Hunt's counsel timely filed a notice of appeal challenging the distribution order in late November 2017, while she was still alive. That appeal is separately pending before this court.

C. *Motions for Relief and for Sanctions*

1. *Section 128 Motion and Motion to Strike*

On October 30, 2017, appellant, acting in propria persona, filed a "Motion for CCP 128 Relief" (the section 128 motion), in which he sought to vacate the distribution order under Code of Civil Procedure section 128, subdivision (a).[3] Appellant contended that the distribution order contradicted the court's September 1, 2017 ruling because it awarded respondents 100 percent of the interest accrued on debts Hunt owed to the trust. He further contended that the order failed to account for a partial satisfaction of Hunt's debt in the amount of approximately $17,000, which she paid pursuant to a writ of execution in 2011.

Respondents filed a motion to strike the section 128 motion. Their motion to strike included a request for sanctions. The motion to strike is not in the appellate record, but appellant's opposition to it is. In that opposition, appellant defended the section 128 motion on its merits. Appellant also contended that the motion to strike included falsehoods, namely an assertion that he lacked standing to challenge the distribution order because he was not a beneficiary of the trust. Appellant claimed that respondents had judicially admitted that he was a beneficiary by alleging that he was in their third amended petition.

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[3] Section 128, subdivision (a), vests in the court the power "To amend and control its process and orders so as to make them conform to law and justice."

The court heard the section 128 motion and the motion to strike it on December 4, 2017. No reporter's transcript of the hearing is in the record. After the hearing, on December 11, 2017, the court issued an order awarding respondents $3,500 in sanctions. The order stated in relevant part: "The Court, having considered the documents before it, having heard the arguments of counsel, and being fully advised, finds as follows: [¶] (1) Respondent Taylor Profita's motion for CCP Section 128 relief was frivolous and done without standing. The motion violated CCP 128.5. Taylor Profita lacks standing to act as counsel for Pauline Hunt, who is currently represented by counsel. Those counsel have filed two notices of appeal. [¶] (2) Petitioners Stephen Andersen and Kathleen Brandt have incurred reasonable attorneys fees in the amount of $3500 in opposing the frivolous motion."

Appellant timely appealed the sanctions order; the appeal remains separately pending.

2. *Section 496 Motion and Motion for Sanctions*

On November 29, 2017, before the section 128 motion and motion to strike were resolved, appellant filed a second motion challenging the distribution order. He captioned this filing "Motion for Recovery of Trust Assets and CCP 496(c) Relief" (the section 496 motion).[4] Appellant again asserted that the distribution order failed to account for Hunt's partial debt

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[4]Code of Civil Procedure section 496 does not exist. The substance of the motion refers to Penal Code section 496, which criminalizes receipt of stolen property (subdivision (a)) and provides a cause of action for "[a]ny person who has been injured by a violation of subdivision (a) . . . for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees" (subdivision (c)).

satisfaction, and the concomitant interest it would have accrued. He further argued that the distribution order mischaracterized the life insurance proceeds as payable to respondents rather than the trust. In his view, respondents—and, apparently, the court—were bound by an allegation in the third amended petition that the life insurance proceeds were a trust asset, rather than the court's post-trial findings and 2010 order directing Hunt to pay the proceeds directly to respondents. Appellant further contended that the mischaracterization constituted a theft under Penal Code section 496, and that respondents were liable for treble damages under that statute. The section 496 motion also sought to bar respondents from participating in further proceedings, and to obtain fees to compensate Hunt for services she provided to the trust.

After the section 128 motion was denied, appellant filed a reply in support of the section 496 motion, presumably in response to an opposition by respondents that is not in the record. Appellant argued that his section 496 motion was not frivolous or worthy of sanctions. He also reiterated his contentions that respondents judicially admitted both that he was a beneficiary and that the life insurance proceeds were a trust asset.

The day before the court was scheduled to hear the section 496 motion, respondents filed a motion for sanctions. The motion is not in the record.

The court heard appellant's section 496 motion on January 12, 2018, the day after the sanctions motion was filed. The record does not contain a reporter's transcript of the hearing. The minute order states: "The Motion filed on November 29, 2017 by Taylor Profita is denied without prejudice."

Appellant subsequently filed his objections and response to respondents' motion for sanctions. He argued that the section 496 motion did not meet the standard for sanctions because it had factual and legal merit and was not filed for an improper purpose. He also disputed respondents' evident claim that he was "trying to relitigate issues pertaining to the Life Insurance Policy," and reiterated that respondents had judicially admitted that he was a trust beneficiary and that the life insurance proceeds were a trust asset.

The court heard respondents' motion for sanctions on February 14, 2018, after Hunt's death. No reporter's transcript of the hearing is in the record. The court issued a written order on March 2, 2018, after "having considered the documents before it, having heard the arguments of counsel, and being fully advised." The order stated: "The Court finds that Taylor Profita is not a beneficiary of the trust and lacks standing. The Court further finds that Taylor Profita's arguments on this issue were made in bad faith, were frivolous, and were not in accordance with the plain language of the trust and Probate Code section 24. Mr. Taylor Profita was given sufficient time to withdraw his styled motion and failed to do so. [¶] IT IS ORDERED that Sanctions in the amount of $8,000.00 is awarded and that Taylor Profita is to pay that amount to the Law Offices of John A. Belcher Client Trust Account within 60 days."

Appellant timely appealed the sanctions order on March 13, 2018; the appeal is separately pending before this court.

D. *Other Filings*

1. *Oppositions*

While the section 496 motion was pending, respondents filed and appellant opposed a motion to effectuate distribution of

the trust assets. In that opposition, appellant argued that distribution could not occur because "Andersen and Brandt owe Hunt and Profita a sum of $1,492,406.27 for their theft . . . and fraud." Appellant also reiterated his argument that respondents had judicially admitted his beneficiary status. In addition, he accused the court of "flatly refus[ing]" to correct errors in the distribution order, and of violating his and Hunt's constitutional rights to due process and equal protection.

Appellant later filed a "Supplemental Opposition to the Proposed Order for Bond and to Distribute Funds." The proposed order to which this filing responded is not in the record. In the supplemental opposition, appellant contended that respondents' counsel had committed various acts of misconduct, including "repeatedly assert[ing] through his filings that Profita is not a beneficiary" and omitting the life insurance proceeds from his accounting of the trust estate.

2. *Federal Complaint*

On January 12, 2018, the same day his section 496 motion was denied without prejudice, appellant filed a complaint for injunctive relief, declaratory relief, and damages in federal court. In that complaint, of which the court took judicial notice at his request, appellant named as defendants Andersen, Brandt, their counsel, Judge William Barry, and the Los Angeles Superior Court. He asserted 12 causes of action, including claims that Judge Barry and the court violated his constitutional rights. He also asserted claims entitled "Deprivation of Profita's Beneficiary Rights," "Theft from the Trust of the Life Insurance Policy," "Theft From the Trust of the Interest Owed by Hunt," and "Fraud Upon the Court Through the Assertion That Profita was Not a Beneficiary of the Andersen Family Trust."

On February 15, 2018, appellant emailed the attorney who was representing Andersen and Brandt in the federal case (not Belcher), apparently to discuss a motion to dismiss he had filed. Appellant accused counsel of "malicious cherry-picking of words" in the motion and requested that the motion be withdrawn. Appellant further demanded that counsel "consent to sanctions of $25,000 for submitting knowingly fraudulent assertions to the court in furtherance of your client's fraudulent activities before this and other courts, or you can refuse to consent, whereby I will be seeking $100,000 for knowingly and maliciously misusing medical information to attempt to justify your clients [sic] fraud." Counsel refused to consent to sanctions.

3. *Requests for Judicial Notice*

From mid-January to mid-February 2018, appellant filed four separate requests for judicial notice that were not tied to any pending motion. Respondents also filed a request for judicial notice during this time frame. The court granted all of the requests on February 20, 2018. The order noted that it considered the requests after the February 14, 2018 hearing on the sanctions motion, "as they were not put in front of the Court properly through no fault of the parties." It further noted, however, that the grant of judicial notice "did not modify the Court's ruling," which it presumably made orally at the February 14, 2018 hearing.

E. *Motion to Deem Appellant Vexatious*

On March 8, 2018, respondents filed a motion to deem appellant a vexatious litigant under section 391, subdivisions (b)(2) and (b)(3). They made the motion "on the ground that (1) Taylor Profita repeatedly relitigates or attempts to relitigate, in propria persona, the validity of the determination against him;

(2) Taylor Profita repeatedly attempts to relitigate or attempts to relitigate, in propria persona, the issues of fact or law, determined or concluded by the final determination against him and (3) Taylor Profita, while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers and engages in other tactics that are frivolous or solely intended to cause delay."

Respondents asserted that appellant had been sanctioned twice for filing frivolous motions "without standing and without merit," and that he was trying to relitigate the same issues in federal court. They identified as problematic several filings discussed above: the section 128 motion, the section 496 motion, appellant's response to their motion to strike, appellant's opposition to their second motion for distribution, appellant's reply in support of the section 496 motion, appellant's opposition and supplemental opposition to their proposed order for bond and to distribute funds, and his objections to their second motion for sanctions. Respondents urged the court to enter a prefiling order so that they could "avoid[ ] the time and expense associated with Profita's troublesome and wasteful litigation."

Appellant opposed the motion. He contended that his conduct did not rise to the level of "vexatious" as defined in section 391, subdivision (b). Appellant emphasized that many of the filings identified by respondents were filed in response to motions they made. Appellant also challenged respondents' claims that he was not a trust beneficiary and that the life insurance proceeds were not trust assets, as well as their alleged misquotation of a document from an unrelated lawsuit and their "fraudulent assertion that Hunt is guilty of forgery."

The court heard and granted the vexatious litigant motion on April 11, 2018. The appellate record does not contain a reporter's transcript of the hearing. The notice of ruling, filed April 12, 2018, states: "Based upon the papers on file with the Court, documentary evidence, argument of counsel and parties and good cause being shown, the Court ordered as follows: [¶] (1) The Motion to Deem Taylor Profita a Vexatious Litigant is GRANTED. [¶] (2) Petitioners shall give notice." The court issued a prefiling order barring appellant from filing new litigation without court permission on April 11, 2018. Appellant moved for reconsideration, the trial court denied that motion, and appellant timely appealed. (See *Luckett v. Panos* (2008) 161 Cal.App.4th 77, 84-85, 90 [prefiling order appealable as injunction].)

DISCUSSION

I. *Governing Law*

"The vexatious litigant statutes were created to curb misuse of the court system by those acting in propria persona who repeatedly file groundless lawsuits or attempt to relitigate issues previously determined against them." (*Goodrich v. Sierra Vista Regional Medical Center* (2016) 246 Cal.App.4th 1260, 1265 (*Goodrich*); see also §§ 391-391.7.) They are intended to protect parties "'who become[ ] the target[s] of one of these obsessive and persistent litigants whose conduct can cause serious financial results to the unfortunate object of his attack.'" (*Tokerud v. Capitolbank Sacramento* (1995) 38 Cal.App.4th 775, 779 (*Tokerud*), quoting *First Western Development Corp. v. Superior Cour*t (1989) 212 Cal.App.3d 860, 867.) The provisions also prevent the "'constant suer'" from "'clogging court calendars,'" thereby causing "'real detriment to those who have legitimate

controversies to be determined and to the taxpayers who must provide the courts.'" (*Tokerud*, *supra*, at p. 779, quoting *Taliaferro v. Hoogs* (1965) 237 Cal.App.2d 73, 74.)

To be declared a vexatious litigant, a party must satisfy one of the four definitions of in section 391, subdivision (b). (*Goodrich*, *supra*, 246 Cal.App.4th at p. 1265.) That subdivision defines as a "'vexatious litigant' . . . a person who does any of the following: [¶] (2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined. [¶] (3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay." (§ 391, subd. (b).)

In addition to satisfying the statutory definition, "'[a]ny determination that a litigant is vexatious must comport with the intent and spirit of the vexatious litigant statute. The purpose of which is to address the problem created by the persistent and obsessive litigant who constantly has pending a number of groundless actions and whose conduct causes serious financial results to the unfortunate objects of his or her attacks and places an unreasonable burden on the courts. [Citations.] Therefore, to find that a litigant is vexatious, the trial court must conclude that the litigant[']s actions are unreasonably impacting the

objects of appellant's actions and the courts as contemplated by the statute.'" (*Goodrich*, *supra*, 246 Cal.App.4th at p. 1265, quoting *Morton v. Wagner* (2007) 156 Cal.App.4th 963, 970-971 (*Morton*).)

"'A court exercises its discretion in determining whether a person is a vexatious litigant. [Citation.] We uphold the court's ruling if it is supported by substantial evidence. [Citations.] On appeal, we presume the order declaring a litigant vexatious is correct and imply findings necessary to support the judgment. [Citation.]'" (*Garcia v. Lacey* (2014) 231 Cal.App.4th 402, 407-408, quoting *Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 219.)

II. *Analysis*

Appellant contends that the court erred in issuing a prefiling order because he does not meet any of the statutory definitions of "vexatious litigant" in section 391, subdivision (b). We agree.

Due to the sparse appellate record, which is appellant's burden to prepare, we are unable to determine the precise basis or bases on which the trial court declared him a vexatious litigant.

Respondents invoked subdivisions (b)(2) and (b)(3) in their motion to deem appellant a vexatious litigant. Subdivision (b)(2) is not applicable here because no litigation has been "finally determined" against appellant. Although section 391 does not define the phrase "finally determined," a judgment "is final for all purposes when all avenues for direct review have been exhausted." (*Childs v. PaineWebber Incorporated* (1994) 29 Cal.App.4th 982, 993.) Accordingly, to support a vexatious litigant motion pursuant to section 391, subdivision (b)(2), the movant must submit evidence that litigation has been

adjudicated on appeal or that the time to request appellate review has expired. (See *id.* at p. 994 [reversing vexatious litigant finding when cases were pending on appeal].) No such evidence was submitted here. To the contrary, Hunt's appeal of the distribution order is currently pending before this court, as are appellant's appeals of the sanctions orders.

Subdivision (b)(3) also is inapplicable. It requires a party to "repeatedly file[ ] unmeritorious motions, pleadings, or other papers, . . . or engage[ ] in other tactics that are frivolous or solely intended to cause unnecessary delay." Appellant's motion practice and other litigation tactics, regardless of their merit or lack thereof,[5] did not rise to the level of "repeatedly."

There is no bright-line rule as to what constitutes "repeatedly" (*Morton*, *supra*, 156 Cal.App.4th, at p. 972), aside from meaning more than once. (*Holcomb v. U.S. Bank National Association* (2005) 129 Cal.App.4th 1494, 1505 (*Holcomb*).) Instead, courts have reasoned that "the Legislature's use of the adverb 'repeatedly' refers 'to a past pattern or practice on the part of the litigant that carries the risk of repetition in the case at hand." (*Ibid.*) *Morton* and *Holcomb* are illustrative.

In *Morton*, the pro. per. litigant filed three unsuccessful motions over the course of three years. (*Morton*, *supra*, 156 Cal.App.4th at p. 972.) The court concluded that the motions, which related to two separate judgments, did not exceed the "repeatedly" threshold. (*Ibid.*) It cautioned, however, that "[t]his is not to say that only three motions could *never* form the basis

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[5]We do not decide here whether appellant's section 128 and section 496 motions were meritorious. They are the subjects of separately pending appeals addressing the sanctions awarded in relation thereto.

for a vexatious litigant designation where perhaps they all seek the exact same relief which has already been denied or all relate to the same judgment or order or are filed in close succession." (*Ibid.*) The court in *Holcomb* similarly concluded that two filings, a complaint imitating a superior court action and a motion for reconsideration, did not constitute evidence sufficient to support a finding that the litigant "repeatedly" relitigated matters as required by section 391, subdivision (b)(2) or (b)(3). (*Holcomb*, *supra*, 129 Cal.App.4th at pp. 1504-1506.) The court pointed out that there was no evidence that the filings carried a risk of repetition in the case. (*Id.* at p. 1505.) In other words, the allegedly improper litigation conduct was not likely to recur.

Appellant filed only two affirmative motions: the section 128 motion and the section 496 motion. Although the motions challenged the same distribution order and were filed in relatively quick succession, they were only two in number. We find unpersuasive respondents' unsupported assertions that appellant's oppositions and responses to their filings and requests for judicial notice should "count" as evidence that he engaged in "repeated" litigation abuse. Respondents failed to point to any authority, and we have not located any, supporting the proposition that a litigant becomes vexatious by opposing motions filed by his or her adversaries, even if the oppositions contain arguments similar to those advanced in the litigant's own motions or previously rejected by the court. The same is true of appellant's requests for judicial notice, which the court granted; respondents argue only that they "contain arguments" and incorrectly claim they were "adjudicated against Profita." We likewise are not convinced that appellant's federal lawsuit supports a finding of vexatious conduct in the state forum. (See

Bravo v. Ismaj, *supra*, 99 Cal.App.4th at p. 225 ["the defendant must establish the plaintiff is vexatious in this forum"].)

In addition to the small number of filings, the record contains no evidence of a "risk of repetition in the case at hand." (*Holcomb*, *supra*, 129 Cal.App.4th at p. 1505.) The underlying trust litigation is nearing a conclusion: the assets have been distributed. Even if the distribution order were reversed in the companion appeal, a remand could address only that last vestige of the litigation; the other substantive issues have been resolved. Moreover, appellant affirmatively represented at oral argument that he has "no intent for any further litigation."

Under the circumstances here, where appellant has filed two motions near the end of a 13-year-old case, the record does not support declaring him a vexatious litigant under either subdivision (b)(2) or (b)(3). This is not to endorse the conduct of either side in this litigation. The record reveals a proliferation of ad hominem attacks, a troubling lack of civility by all involved, and an apparent lack of standing by appellant, who has never properly intervened or substituted into this case. Additionally, appellant's filings, while insufficient in number to support a vexatious finding at this juncture, are suggestive of a tendency to reiterate arguments rejected by the court and reraise previously resolved issues.[6] This tendency, if manifested in future filings, could support a finding of vexatiousness in the future. These problems are not solved by a prefiling order, however, which is aimed at "precluding the initiation of a meritless lawsuit and the costs associated with defending such litigation." (*Bravo v. Ismaj*,

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[6]Examples include appellant's insistence that the life insurance proceeds are trust assets and that his alleged status as a trust beneficiary gives him standing to sue.

supra, 99 Cal.App.4th at p. 222.) There is no indication that appellant has initiated any litigation in propria persona in state court, and he has represented that he does not intend to do so in the future.

DISPOSITION

The prefiling order is reversed. Appellant may recover his costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J.

CURREY, J.